

ESTTA Tracking number: **ESTTA268707**

Filing date: **02/25/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183140
Party	Plaintiff Moby's Auto Spa, Inc.
Correspondence Address	James F. Keenan, Jr. Bernstein, Shur, Sawyer & Nelson 100 Middle Street Portland, ME 04104 UNITED STATES jkeen@bssn.com
Submission	Motion to Suspend for Civil Action
Filer's Name	John G. Osborn
Filer's e-mail	josborn@bernsteinshur.com
Signature	/s/ John G. Osborn
Date	02/25/2009
Attachments	02-25-09 - Motion to Suspend.pdf (3 pages)(21045 bytes) 02-25-09 - EXHIBIT A to Motion to Suspend.pdf (19 pages)(4798257 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MOBY’S AUTO SPA, INC.)	
)	
Opposer,)	Mark: WHALE WASH
)	
v.)	Serial No.: 77/205,602
)	
WHALE WASH, LLC,)	Opposition No. 91183140
)	
Applicant.)	

OPPOSER’S MOTION TO SUSPEND

Opposer, Moby’s Auto Spa, Inc., pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 510.02, hereby moves to suspend this proceeding pending the resolution of *Moby’s Auto Spa, Inc. v. Whale Wash, LLC and Victor Elizalde*, CV-09-02167, filed in the United States District Court for the Central District of California (the “Federal Action”), attached hereto as Exhibit A. In support thereof, Opposer states as follows.

1. In Whale Wash, LLC’s (“Applicant” or “Whale Wash”) Answers to Opposer’s First Set of Interrogatories in the instant Opposition, served on December 31, 2008, Applicant stated the following:
 - a. Applicant intends to sell car washes and car wash products associated with Moby’s Auto Wash, Inc.
 - b. Applicant has sold its “Whale Wash” services on the Internet at www.mobys.us.
 - c. Applicant began using www.mobys.us to sell its services after it had received actual notice of Opposer’s ownership and registration of Opposer’s Marks, including the Mark “MOBY’S AUTO SPA.”
2. On January 15, 2009, Opposer demanded that Applicant cease and desist its use of all of Opposer’s registered Marks or Marks confusingly similar thereto.

3. After that demand was rejected, Opposer filed the Federal Action, on February 23, 2009.

4. The Federal Action alleges trademark infringement, false designation of origin and unfair competition under the Lanham Act, and violations of the Anti-Cybersquatting Act by Whale Wash and Victor Elizalde.

5. The relief requested in the Federal Action includes an injunction against the use of the names “Whale Wash,” “Mobys Auto Wash,” “Mobys,” or any other name that may cause confusion as to the defendants’ affiliation, or the affiliation of their goods or services, with Opposer.

6. As demonstrated by Exhibit A, the final determination of the Federal Action will resolve the issues before the Board.

Date: February 25, 2009

Respectfully submitted by: /s/ John G. Osborn
James F. Keenan, Jr., Esq.
John G. Osborn, Esq.
Attorneys for Opposer

BERNSTEIN SHUR
100 Middle Street
Portland, Maine 04104
207-774-1200
jkeenan@bernsteinshur.com
josborn@bernsteinshur.com

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2009, *Opposer's Motion to Suspend* was served upon counsel for Applicant, Whale Wash, LLC, *via* e-mail and First Class mail at the following address:

Jose Martinez, Jr., Esq.
Martinez Law
76 Ninth Avenue, Suite 1110
New York, New York 10011
Jose@martinezl原因pllc.com

/s/ John G. Osborn
John G. Osborn, Esq.
Attorney for Opposer

BERNSTEIN SHUR
100 Middle Street
PO Box 9729
Portland, ME 04104-5029
207-774-1200
josborn@bernsteinshur.com

1 The Aftergood Law Firm
2 Aaron D. Aftergood, SBN 239853
3 1875 Century Park East, Suite 2230
4 Los Angeles, California 90067
5 aaron@aftergoodesq.com
6 Tel: (310) 551-5221
7 Fax: (310) 496-2840

8 Attorney for Plaintiff,
9 MOBY'S AUTO SPA, INC.

FILED
2009 FEB 23 AM 11:58
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 **CV09-01267 PSG FMOx**
13 CASE NO.:

14 MOBY'S AUTO SPA, INC.,)
15 a Kentucky Corporation,)
16)
17 Plaintiff,)

18 **COMPLAINT**

19 v.)

20 COUNTS:

21 WHALE WASH, LLC, a Nevada)
22 Limited Liability Company, and)
23 VICTOR ELIZALDE,)

- 24 1. TRADEMARK INFRINGEMENT
25 2. FALSE DESIGNATION OF ORIGIN
26 AND UNFAIR COMPETITION
27 UNDER THE LANHAM ACT

28 Defendants.)

3. VIOLATION OF ANTI-
CYBERSQUATTING ACT

1 Plaintiff, MOBY'S AUTO SPA, INC., of Louisville, Kentucky, (hereinafter
2 "Plaintiff" or "Moby's"), by and through its undersigned attorneys, for its Complaint
3 against WHALE WASH, LLC ("Whale Wash"), a Nevada Limited Liability Company,
4 and VICTOR ELIZALDE ("Elizalde" and, collectively with Whale Wash, the
5 "Defendants"), states and alleges as follows:

6 **INTRODUCTION**

- 7 1. This is an action brought by MOBY'S AUTO SPA, INC., a company

1 engaged in the sale of car wash services and related goods and services, and an owner of
2 certain trademarks, against WHALE WASH, a company also engaged in the sale of car
3 wash services and related goods and services, and ELIZALDE, managing member Whale
4 Wash, for unfair competition, trademark and trade name infringement and cybersquatting
5 under the Lanham Act.

6 **PARTIES**

7 2. Plaintiff Moby's is a Kentucky corporation with its principal place of
8 business in Louisville, Kentucky. Moby's provides car wash services and related goods
9 and services in Kentucky, with the intention of expanding throughout the United States.

10 3. Defendant Whale Wash is a Nevada Limited Liability Company, with, on
11 information and belief, a principal place of business in Los Angeles, California. Whale
12 Wash is engaged in owning and operating a car wash in Bakersfield, California, with the
13 stated intent of expanding throughout the United States.

14 4. Defendant Elizalde is a managing member and director of Whale Wash and
15 the registrant of the Internet domain www.mobys.us. Upon information and belief,
16 Defendant Elizalde is a resident of Los Angeles, California.

17 **JURISDICTION AND VENUE**

18 5. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1331
19 because a federal question is directly involved under the Lanham Act, 15 U.S.C. § 1051,
20 *et seq.*, as well as pursuant to 28 U.S.C. § 1338.

21 6. Venue is proper because Defendants both reside in this district.

22 **PLAINTIFF'S TRADEMARK RIGHTS**

23 7. Moby's owns the trademarks (collectively, "Moby's' Marks") "ONE
24 WHALE OF A WASH," "MOBY'S AUTO SPA ONE WHALE OF A WASH" (with
25 graphic) AND "MOBY'S AUTO SPA."

26 8. Moby's has been using the "MOBY'S AUTO SPA" Mark as a trademark in
27 interstate commerce since September 2005 or earlier.

28 9. Moby's has been using the "ONE WHALE OF A WASH" Mark as a

1 trademark in interstate commerce since September 2005 or earlier.

2 10. Moby's has been using the "MOBY'S AUTO SPA ONE WHALE OF A
3 WASH" (with graphic) Mark as a trademark in interstate commerce since December 2005
4 or earlier.

5 11. Moby's has been using the Moby's Marks as trademarks in connection with
6 the advertising and sale of car wash and related goods and services since September 2005
7 or earlier.

8 12. Defendants did not use any of the Moby's Marks as a trademark in
9 interstate commerce in connection with the advertising or sale of car wash or related
10 goods or services prior to September 2005.

11 13. On or about December 6, 2005, the United States Patent and Trademark
12 Office (the "USPTO") registered the Mark "ONE WHALE OF A WASH" for Moby's to
13 use in International Class 37, automobile washing, detailing and polishing services.

14 14. On or about March 21, 2006, the USPTO registered the Mark "MOBY'S
15 AUTO SPA" for Moby's to use in International Class 37, automobile washing, detailing
16 and polishing services.

17 15. On or about May 30, 2006, the USPTO registered the Mark, "MOBY'S
18 AUTO SPA ONE WHALE OF A WASH," with a graphic logo, for Moby's to use in
19 International Class 37, automobile washing, detailing and polishing services.

20 16. Moby's currently sells and advertises its products and services in Kentucky,
21 with plans to expand its sales and advertising nationally.

22 **DEFENDANTS' INFRINGEMENTS AND UNFAIR AND DECEPTIVE ACTS**

23 17. Defendants obtained constructive notice of Moby's ownership of the
24 Moby's Marks no later than May 30, 2006

25 18. On April 9, 2007, Defendant Whale Wash filed for LLC status under the
26 "Whale Wash" name in Nevada.

27 19. On information and belief, Defendant Whale Wash began providing
28 automobile and oversized vehicle washing services in Bakersfield, California in 2007.

1 20. In November, 2007, Defendant Whale Wash began advertising its services
2 under the name "Whale Wash."

3 21. Defendant Whale Wash began selling and advertising its services *via* the
4 Internet at www.mobys.us in or about January, 2008, using the name Mobys Auto Wash.

5 22. Defendant Whale Wash has stated a continued intention to sell automobile
6 and oversize vehicle washes and related products under the name Moby's Auto Wash,
7 Inc.

8 23. Defendant Whale Wash has stated an intention to sell its services and
9 products nationally.

10 24. Defendant Elizalde, managing member of Defendant Whale Wash,
11 registered the domain name, www.mobys.us, on October 18, 2006.

12 25. In that registration, Defendant Elizalde identified himself as administrative
13 contact and identified the administrative contact organization as Moby's Auto Wash,
14 10511 Ilona Avenue, Los Angeles, California.

15 26. On or about September 6, 2007, Moby's contacted Defendant Whale Wash
16 regarding its recently filed an application with the USPTO to register the trademark
17 "WHALE WASH," and demanded that Defendant Whale Wash withdraw that
18 application.

19 27. That correspondence included copies of registrations for all of the Moby's
20 Marks.

21 28. Accordingly, Defendants obtained actual notice of Moby's' ownership of
22 the Moby's Marks no later than September 6, 2007.

23 29. On or about December 31, 2008, in connection with discovery responses
24 served by Defendant Whale Wash in Moby's' Opposition (No. 91183140) to Defendant
25 Whale Wash's federal trademark application, Moby's learned that Defendant Whale
26 Wash is advertising its services and products via www.mobys.us, using the name Moby's
27 Auto Wash.

28 30. According to the www.mobys.us website, Defendant Elizalde is directly and

centrally involved in the operation and management of Defendant Whale Wash.

31. On or about January 15, 2009, Moby's demanded that Defendants cease and desist the use the Moby's Marks.

32. Defendant Whale Wash has refused to withdraw the "Whale Wash" application with the USPTO, and to cease and desist using the Moby's Marks.

33. On information and belief, Defendant Elizalde personally approved Defendant Whale Wash's refusal to cease and desist its use of the Moby's Marks.

34. Defendants' products and services are identical and/or substantially similar to those offered by Moby's.

35. Defendants are direct competitors of Moby's.

36. Defendants' use of the Moby's Marks has caused confusion, or is likely to cause confusion, in the marketplace as to the source of Defendants' and Moby's' products and services.

37. Defendants did not immediately cease using the Moby's Marks upon receipt of Moby's' cease and desist demands and, to date, have refused to cease use of the Moby's' Marks.

38. Defendants' use of the Moby's Marks has caused and is causing irreparable harm to Moby's and to Moby's' good will and reputation.

Count I

Federal Trademark Infringement

39. Moby's repeats and realleges each of the allegations contained in Paragraphs 1 through 37 of this Complaint as if fully set forth herein.

40. Defendants have used the Moby's Marks without the consent, and in the face of clear cease and desist demands, of Moby's.

41. By using the Moby's Marks in connection with the advertising and sale of automobile and oversize vehicle washes and related products, Defendants have caused the likelihood of confusion in the minds of the public as to the connection between the products of Moby's and those of Defendants.

42. The acts of Defendants described above constitute an infringement of the rights of Moby's in and to the use of its federally registered marks, with consequent damages to Moby's and the business and good will associated with and symbolized by the Moby's Marks and, specifically, give rise to this action under 15 U.S.C. §§ 1114 *et seq.*

43. Defendants' acts of trademark infringement have caused and are causing great and irreparable harm to Moby's, Moby's' good will and Moby's' rights to the Moby's Marks, in an amount which cannot be adequately determined at this time and, unless restrained, will cause further irreparable injury and damage, leaving Moby's with no adequate remedy at law.

44. All of Defendants' infringing actions occurred after they had constructive notice of Moby's ownership of the Moby's Marks and at least some of Defendants' infringing actions occurred after they had actual notice of Moby's ownership of the Moby's Marks and had been directed by Moby's to cease and desist their infringement.

45. Accordingly, Defendants' infringement was willful.

46. This case is an “exceptional” one within the meaning and scope of 15 U.S.C. § 1117, so that attorneys’ fees and treble damages should be awarded to Moby’s.

47. By reason of the foregoing, Plaintiff is entitled to permanent injunctive relief against the Defendants, and anyone associated therewith, to restrain further acts of infringement and, after trial, to recover any damages caused by reason of Defendants' aforesaid acts of infringement, and to recover enhanced damages based upon the willful, intentional, and/or grossly negligent activities of Defendants.

Count II

False Designation of Origin and Unfair Competition under the Lanham Act

48. Moby's repeats and realleges each of the allegations contained in Paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Defendants, by their knowing and intentional unauthorized imitation, adoption, and use of the Moby's Marks and/or a mark or marks which are confusingly

1 similar to the Moby's Marks in association with Defendants' goods and services, have in
2 the past falsely designated and continue to falsely designate its goods as being derived or
3 affiliated with those of Moby's.

4 50. Defendants' use of the Moby's Marks is likely to cause relevant consumers
5 to mistakenly believe that Defendants have an affiliation with Moby's, that Defendants'
6 business is sponsored or approved by Moby's, or that Defendants are otherwise associated
7 with or have obtained permission from Moby's to use the Moby's Marks in connection
8 with the sale of goods and services by Defendants.

9 51. By engaging in the unauthorized activities described above, Defendants
10 have made, and continue to make, false, deceptive and misleading statements constituting
11 false representations and false advertising made in connection with the sale of goods or
12 services distributed in interstate commerce in violation of Section 43(a) of the Lanham
13 Act, 15 U.S.C. § 1125(a). Furthermore, in view of the notices provided to Defendants by
14 the acts and statements of Moby's, such activities were, and remain, willful and
15 intentional.

16 52. Defendants' willful and intentional acts of unfair competition, false
17 advertising, and false designation of origin have caused and are causing great and
18 irreparable injury and damage to Moby's' business and its good will and reputation in an
19 amount that cannot be ascertained at this time and, unless restrained, will cause further
20 irreparable injury and damage, leaving Moby's with no adequate remedy at law.

21 53. This case is an "exceptional" one within the meaning and scope of 15
22 U.S.C. § 1117, so that attorneys' fees and treble damages should be awarded to Moby's.

23 54. By reason of the foregoing, Moby's is entitled to injunctive relief against
24 Defendants, and anyone acting in concert with Defendants, to restrain further acts of
25 unfair competition, false advertising, and false designation of origin and, after trial, to
26 recover any damages caused by reason of Defendants' aforesaid acts, and to recover
27 enhanced damages based on Defendants' willful, intentional, and/or grossly negligent
28 acts.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Count III

Violation of Anti-Cybersquatting Act

55. Moby's repeats and realleges each of the allegations contained in Paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. Defendant Elizalde registered the domain name www.mobys.us on October 18, 2006, identifying the registrant organization as Mobys Auto Wash.

57. As of that time, Moby's ownership of the "MOBY'S AUTO SPA" Mark was public knowledge based on Moby's trademark registration with the USPTO.

58. On or about September 6, 2007, Moby's provided Defendants with actual notice of its ownership of the federally registered "MOBY'S AUTO SPA" Mark.

59. Defendant Whale Wash began using www.mobys.us to sell its automobile and oversized vehicle washing services and related goods and services in January 2008.

60. On information and belief, Defendant Whale Wash is Defendant Elizalde's authorized licensee to use the www.mobys.us domain.

61. Defendants have refused to meet Moby's demands that they cease and desist infringement of the Moby's Marks, including a refusal to cease use of the www.mobys.us domain to sell oversized vehicle and automobile washing services and related services and goods.

62. At the time Defendant Elizalde registered the www.mobys.us domain name and at the time Defendant Whale Wash began using that domain name to sell its automobile and oversized vehicle washing services and related goods and services, Moby's "MOBY'S AUTO SPA" Mark was distinctive.

63. The domain name, www.mobys.us, is confusingly similar to Plaintiff's "MOBY'S AUTO SPA" Mark.

64. On information and belief, Defendants registered and are using the www.mobys.us in bad faith.

65. By engaging in the unauthorized activities described above, Defendants have engaged in cybersquatting in violation of the Anti-Cybersquatting Act, 15 U.S.C. §

1 1125(d). Furthermore, in view of the notices provided to Defendants by the acts and
2 statements of Moby's, such activities were, and remain, willful and intentional.

3 66. Defendants' willful and intentional acts of cybersquatting, have caused and
4 are causing great and irreparable injury and damage to Moby's' business and its good will
5 and reputation in an amount that cannot be ascertained at this time and, unless restrained,
6 will cause further irreparable injury and damage, leaving Moby's with no adequate
7 remedy at law.

8 67. This case is an "exceptional" one within the meaning and scope of 15
9 U.S.C. § 1117, so that attorneys' fees and treble damages should be awarded to Moby's.

10 68. By reason of the foregoing, Moby's is entitled to injunctive relief against
11 Defendants, and anyone acting in concert with Defendants, to restrain further acts of
12 cybersquatting and, after trial, to recover any damages, including statutory damages under
13 15 U.S.C. § 1117, caused by reason of Defendants' aforesaid acts, and to recover
14 enhanced damages based on Defendants' willful, intentional, and/or grossly negligent
15 acts.

16 PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff respectfully prays for the following relief:

18 1. That Defendants be preliminarily and permanently enjoined from using the
19 names "Whale Wash," "Mobys Auto Wash," "Mobys," or any other name that may cause
20 confusion as to their affiliation, or the affiliation of their goods, with Plaintiff Moby's
21 Auto Spa;

22 2. That Defendants be ordered to transfer the domain name www.mobys.us to
23 Plaintiff Moby's Auto Spa free of charge;

24 3. That Plaintiff Moby's Auto Spa be awarded actual damages from
25 Defendants under the Lanham Act and the Anti-Cybersquatting Act, including enhanced
26 damages as allowed by 15 U.S.C. § 1117;

27 4. That Plaintiff Moby's Auto Spa be awarded statutory damages from
28 Defendants under the Anti-Cybersquatting Act;

5. That Plaintiff Moby's Auto Spa be awarded its costs and expenses, including its attorneys' fees as appropriate under the Lanham Act;

6. That Plaintiff Moby's Auto Spa be awarded prejudgment and post-judgment interest; and

7. Such other relief as is just and proper.

Respectfully submitted this 23rd day of February, 2009,

THE AFTERGOOD LAW FIRM

By:

AARON D. AFTERGOOD

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOBY'S AUTO SPA, INC.,
a Kentucky Corporation,

PLAINTIFF(S)

v.

WHALE WASH, LLC,
a Nevada Limited Liability Company,
and VICTOR ELIZALDE,

DEFENDANT(S).

CASE NUMBER

CV09-01267 PSG FMOx

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Aaron D. Aftergood, whose address is 1875 Century Park East, Suite 2230, Los Angeles, California 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: FEB 23 2009

By: _____



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) MOBY'S AUTO SPA, INC., a Kentucky Corporation	DEFENDANTS WHALE WASH, LLC, a Nevada Limited Liability Company, and VICTOR ELIZALDE
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) The Aftergood Law Firm Aaron D. Aftergood 1875 Century Park East, Suite 2230 Los Angeles, CA 90067 (310) 551-5221	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify):
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ According to Proof

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

(1) TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114 et seq.), (2) LANHAM ACT (15 U.S.C. § 1125(a)); AND (3) CYBERSQUATTING (15 U.S.C. § 1125(d)).

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
---	--	--	---	---	--

FOR OFFICE USE ONLY: Case Number: CV09-01267

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

1 The Aftergood Law Firm
2 Aaron D. Aftergood, SBN 239853
3 1875 Century Park East, Suite 2230
4 Los Angeles, California 90067
aaron@aftergoodesq.com
Tel: (310) 551-5221
Fax: (310) 496-2840

5 Attorney for Plaintiff,
6 MOBY'S AUTO SPA, INC.

FILED
2009 FEB 23 PM 12:04
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA

11 MOBY'S AUTO SPA, INC.,)
12 a Kentucky Corporation,)
13)
14 Plaintiff,)

15 v.)

16 WHALE WASH, LLC, a Nevada)
17 Limited Liability Company, and)
18 VICTOR ELIZALDE,)
19 Defendants.)

CV 09-01267 PSG FMOx
CASE NO.:

NOTICE OF INTERESTED
PARTIES

F.R.CIV.P. 7.1

20
21
22 Plaintiff Moby's Auto Spa, Inc., through counsel, states pursuant to Fed.R.Civ.P.
23 7.1 that it has no parent corporation and that there is no publicly held corporation that
24 owns 10 % or more of its stock. Furthermore, pursuant to Local Rule 7.1-1, the
25 undersigned, counsel of record for Moby's Auto Spa, Inc., certifies that the following
26 listed party (or parties) may have a pecuniary interest in the outcome of this case. These
27 representations are made to enable the Court to evaluate possible disqualification or
28 recusal.

FILED

BY
FEB 23 PM 12:03
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
SEND

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Moby's Auto Spa, Inc. v. Whale Wash, LLC, et al.	PLAINTIFF(S),	CASE NUMBER CV09-1267 PSG (FMOx)
	DEFENDANT(S).	NOTICE TO COUNSEL RE: COPYRIGHT, PATENT, AND TRADEMARK REPORTING REQUIREMENTS

TO: COUNSEL OF RECORD:

Pursuant to Local Rule 3-1 of this court, in all cases where jurisdiction is invoked in whole or in part under 28 U.S.C. Section 1338 (regarding patents, plant variety protection, copyrights and trademarks), counsel shall, at the time of filing of the complaint, provide the Clerk with an original and two (2) copies of the required notice (AO 120) to the Patent and Trademark Office in patent, plant variety protection and trademark matters and / or an original and four (4) copies of the required notice (AO 121) in copyright matters. The required forms of notice to the Patent and Trademark and Copyright Offices are enclosed for your convenience.

Please complete the enclosed form(s) and return to: Clerk, U. S. District Court, ATTN: New Actions, at the following address within ten (10) days:

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> 312 N. Spring Street
Main Floor, Room G-8
Los Angeles, CA 90012
Phone: (213)894-2215 | <input type="checkbox"/> 411 West Fourth St.
Suite 1053
Santa Ana, CA 92701-4516
Phone: (714)338-4750 | <input type="checkbox"/> 3470 Twelfth Street
Room 134
Riverside, CA 92501
Phone: (951)328-4450 |
|---|--|---|

If you should have any questions regarding this matter, you may contact the Intake Supervisor at the above-noted phone number.

CLERK, U. S. DISTRICT COURT

Dated: 2/23/09

By: LHorn
Deputy Clerk

TO: <div style="text-align: center;"> Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 </div>	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
--	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court _____ on the following ☐ Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
PLAINTIFF		DEFENDANT
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
-------	-------------------	------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Philip S. Gutierrez and the assigned discovery Magistrate Judge is Fernando M. Olguin.

The case number on all documents filed with the Court should read as follows:

CV09- 1267 PSG (FMOx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

FILED

2009 FEB 23 PM 12:03
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOBY'S AUTO SPA, INC.

PLAINTIFF(S)

V.

WHALE WASH, LLC, ET AL.

DEFENDANT(S).

CASE NUMBER

CV09- 1267 PSG (FMOx)

**NOTICE TO PARTIES OF ADR PILOT
PROGRAM**

Dear Counsel,

The district judge to whom the above-referenced case has been assigned is participating in an ADR Pilot Program. All counsel of record are directed to jointly complete the attached ADR Pilot Program Questionnaire, and plaintiff's counsel (or defendant in a removal case) is directed to concurrently file the Questionnaire with the report required under Federal Rules of Civil Procedure 26(f).

Clerk, U.S. District Court

02/23/09

Date

By: LHORN

Deputy Clerk

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOBY'S AUTO SPA, INC.

PLAINTIFF(S)

V.

WHALE WASH, LLC, ET AL.

DEFENDANT(S).

CASE NUMBER

CV09- 1267 PSG (FMOx)

ADR PILOT PROGRAM QUESTIONNAIRE

(1) What, if any, discovery do the parties believe is essential in order to prepare adequately for a settlement conference or mediation? Please outline with specificity the type(s) of discovery and proposed completion date(s). Please outline any areas of disagreement in this regard. Your designations do not limit the discovery that you will be able to take in the event this case does not settle.

(2) What are the damage amounts being claimed by each plaintiff? Identify the categories of damage claimed [e.g., lost profits, medical expenses (past and future), lost wages (past and future), emotional distress, damage to reputation, etc.] and the portion of the total damages claimed attributed to each category.

(3) Do the parties agree to utilize a private mediator in lieu of the court's ADR Pilot Program?

Yes ☐ No ☐

(4) if this case is in category civil rights - employment (442), check all boxes that describe the legal bases of plaintiff claim(s).

☐ Title VII

☐ Age Discrimination

☐ 42 U.S.C. section 1983

☐ California Fair Employment and Housing Act

☐ Americans with Disabilities Act of 1990

☐ Rehabilitation Act

☐ Other _____

I hereby certify that all parties have discussed and agree that the above-mentioned responses are true and correct.

Date

Attorney for Plaintiff (Signature)

Attorney for Plaintiff (Please print full name)

Date

Attorney for Defendant (Signature)

Attorney for Defendant (Please print full name)